Supreme Court, U.S.
FILED

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No. 05-

IN THE SUPREME COURT OF THE UNITED STATES

DIANNE TROUPE, as Personal Representative for the Estate of Ricardo Robinson, Deceased, et al.,

Petitioners,

v.

SARASOTA COUNTY, FLORIDA, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DANIEL L. WALLACH
(*Counsel of Record*)
STEVEN B. LESSER
BECKER & POLIAKOFF, P.A.
3111 Stirling Road
Fort Lauderdale, Florida 33312
Telephone: (954) 987-7550
Attorneys for Petitioners

QUESTIONS PRESENTED

1. In order to satisfy the "seizure" requirement of a Fourth Amendment excessive force claim, does a plaintiff have to establish that the officer had the intent to cause harm unrelated to the legitimate object of arrest or that he otherwise committed a Fourteenth Amendment due process deprivation?

2. Are the passengers of a fleeing vehicle considered "seized" within the meaning of the Fourth Amendment when a law enforcement officer intentionally fires his weapon at the vehicle with the intention of stopping it and kills the driver, causing the vehicle to crash, where the officer is aware of the presence of passengers inside the vehicle and considers them to be criminal suspects even though the primary target of the officer's actions is the driver of the vehicle?

3. In assessing whether a law enforcement officer's use of deadly force was "reasonable" under the standard enunciated in *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865 (1989), may the reviewing court conclude, on a defense motion for summary judgment, that the officer's use of deadly force was justified merely because a reasonable officer on the scene "*could have believed*" that the fleeing suspect posed a threat of death or serious bodily harm, or, rather, must the evidence show that a reasonable officer "*would have believed*" that the fleeing suspect's actions posed such a threat?

4. Is a law enforcement officer justified in using deadly force against the unarmed driver of a fleeing vehicle out of a generalized concern for the welfare of unidentified individuals located beyond the immediate surrounding area where neither the driver nor the vehicle posed an immediate threat of death or serious bodily harm to the officer or others?

5. In analyzing the issue of "qualified immunity" under the first prong of *Saucier v. Katz*, 533 U.S. 194, 121

S.Ct. 2151 (2001), is it permissible for the reviewing court to (a) decide the issue solely by reference to whether the officer's actions were "objectively reasonable" under *Graham*, thereby "conflating" the two issues, and (b) credit the defendant officer's version of the material events where it is contradicted by the plaintiffs' version of the facts (as supported by competent evidence) and where plaintiffs' version of the facts supports a claim of excessive office?

6. Does this Court's decision in *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694 (1985), provide a reasonable law enforcement officer with fair notice that it is a violation of the Fourth Amendment to use deadly force against an unarmed suspect set on avoiding capture through a vehicular flight where no law enforcement officers or civilians in the immediate area are at risk from the flight?

7. In assessing the issue of proximate causation under § 1983, does a suspect's decision to avoid apprehension by fleeing in an automobile constitute an "intervening" cause which breaks the chain of causation between an officer's use of deadly force to stop the vehicle and the resulting injuries suffered by the vehicle's passengers following the crash of the vehicle where the vehicular flight preceded the use of deadly force and the officer was aware of the presence of passengers inside the vehicle prior to shooting at the vehicle?

8. Can a law enforcement officer who fired his weapon at a moving vehicle to prevent its escape, but whose shot missed its intended target, nonetheless be individually liable under 42 U.S.C. § 1983 where he (a) "acted in concert" with the officer who fired the fatal shot, (b) was that officer's supervisor, and (c) personally participated in the incident?

9. Where a plaintiff has alleged a claim of §1983 municipal liability based upon a city's "persistent failure to discipline" its police officers, can the reviewing court dismiss such a claim simply because the officers were exonerated by the municipality in the specific incident under review without consideration of prior investigations conducted by the city?

10. Where a plaintiff has alleged a claim of §1983 municipal liability based upon a city's "failure to train" its police officers in the use and limitations of deadly force during vehicular pursuits, can the reviewing court dismiss such a claim on a defense motion for summary judgment where numerous police officers, including the shooting officers, testified that no such training was ever provided?

PARTIES TO THE PROCEEDING

Petitioners are (1) Dianne Troupe, as Personal Representative for the Estate of Ricardo Robinson, deceased; and (2) Leon Waiters, Jr.

Respondents are: (1) Sarasota County, Florida; (2) Geoffrey Monge, (3) William F. Balkwill; (4) Kevin L. Gooding; and (5) Timothy L. Bauer.

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